

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JASON J. KILBORN,) Case No. 22 C 475
)
Plaintiff,)
)
v.)
)
MICHAEL AMIRIDIS, CARYN A.)
BILLS, JULIE M. SPANBAUER,)
DONALD KAMM, and ASHLEY)
DAVIDSON,) Chicago, Illinois
) July 8, 2025
Defendants.) 9:45 a.m.

TELEPHONIC TRANSCRIPT OF PROCEEDINGS - MOTION
BEFORE THE HONORABLE SARA L. ELLIS

APPEARANCES:

For the Plaintiff: VITALE, VICKREY, NIRO, SOLON & GASEY LLP
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MR. PATRICK F. SOLON
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PROCEEDINGS REPORTED BY STENOTYPE
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1 (Proceedings heard via telephone:)

2 THE CLERK: Case 22 CV 475, Kilborn v. Amiridis, et
3 al.

4 Counsel for plaintiff, please state your name for the
5 record.

6 MR. SOLON: Good morning, Your Honor. It's Patrick
7 Solon and Paul Vickrey together here on the phone for the
8 plaintiff.

9 THE CLERK: Defendant?

10 MS. BABBITT: Good morning, Your Honor. Elizabeth
11 Babbitt on behalf of defendants.

12 THE COURT: All right. Good morning.

13 So did plaintiffs get a chance to look at defendants'
14 motion for leave to file an additional motion to dismiss?

15 UNIDENTIFIED SPEAKER: Yes, Your Honor. And we can
16 give you a brief position on that.

17 THE COURT: Sure. Go ahead.

18 UNIDENTIFIED SPEAKER: So procedurally I think the --
19 the path open to them for these two defenses that they
20 didn't -- they didn't argue in the Seventh Circuit and so, you
21 know, weren't in the opinion is that they can include those in
22 their answer, they should file an answer, and all their
23 defenses, including these two, we agree they -- they are
24 waived, you know, generally in the case. Put them in the
25 answer. And there are procedural vehicles if they want to seek

1 partial judgment based on those or any other viable defenses.

2 They can use Rule 12(c) or they can use Rule 56.

3 And but our position is that what they can't do,
4 because of the resolution of the appeal and under the, you
5 know, mandate doctrine, law of the case, appeal rules, is what
6 they can't do is refile the same Rule 12(b)(6) motion that was
7 decided on the appeal. They opted not to include these two
8 arguments as alternative grounds for affirmance. That was
9 their -- they had the right to -- they didn't -- they weren't
10 required to do that. But what they can't do is go back and
11 refile the same motion and get a do-over of the part of the
12 case, you know, that has been resolved on appeal.

13 But they have an alternative path, and what they
14 should be doing now is filing an answer. And what we would --
15 and because the ultimate outcome of the appeal, of course, is
16 that the case can't be dismissed. The second amended complaint
17 is going forward. And so at this point, the case is
18 appropriate to, you know, be scheduled for discovery and to
19 proceed. And that's what we would like to see happen.

20 So we think the path is they file an answer. If they
21 think they're entitled to some partial judgment, there's
22 vehicles for that under the rules. They're not entitled to
23 dismissal, and so the 12(b)(6) motion resurrecting old
24 arguments is not a good vehicle and that the case should just
25 be scheduled to go forward for discovery from here.

1 And that's all.

2 THE COURT: All right.

3 MS. BABBITT: Your Honor, this is Elizabeth --

4 THE COURT: One of the -- yeah, sorry. Hold on.

5 One of the questions I had for the plaintiff is the --
6 one of the issues that the defendants raised in their motion
7 essentially is a clarification question that perhaps we could
8 resolve here on the phone which is at footnote 2, that
9 defendants are essentially asking for clarification whether
10 Mr. Kilborn is asserting defamation or false light claim
11 against the defendants in their official capacity. And they
12 are assuming that it is only in their individual capacity; is
13 that correct?

14 UNIDENTIFIED SPEAKER: Well, I think because that --
15 those are state law concepts, Your Honor, I think the answer is
16 that we're suing the individuals who committed the defamation
17 and we're suing them as agents of the -- you know, of the
18 entity. Under the Eleventh Amendment, we're not seeking
19 monetary relief against the state of Illinois.

20 So at the -- I'm not sure that the -- you know, the
21 Section 1983 statutory concept of official and individual
22 capacities doesn't layer on perfectly with the state law
23 defamation claim I think is the problem, the problem in the
24 sense of not knowing exactly how to answer that question.

25 THE COURT: All right. So I guess what I'm hearing

1 from you is that these two state law claims anyway, you are
2 moving forward with those against the individuals in their
3 individual capacity as well as, like, agents of the university
4 but not seeking to hold the state liable for damages with
5 regard to those. Would that be correct?

6 UNIDENTIFIED SPEAKER: Yes.

7 UNIDENTIFIED SPEAKER I think that's correct.

8 THE COURT: Okay.

9 UNIDENTIFIED SPEAKER: And, yeah, and I -- I'm going
10 to look at Mr. Vickrey here.

11 Is there any equitable or injunctive issues --

12 UNIDENTIFIED SPEAKER: No.

13 UNIDENTIFIED SPEAKER: -- in the state law claims?

14 UNIDENTIFIED SPEAKER:: No, there isn't.

15 UNIDENTIFIED SPEAKER: So that's the money --

16 COURT REPORTER: I'm sorry. Excuse me, Counsel.

17 Excuse me, Counsel. Whatever plaintiff's counsel is speaking
18 at a time, you need to identify yourselves since you're on the
19 same line. So who was speaking first?

20 MR. SOLON: Yes. Pat -- I'm sorry. I just read the
21 minute order that told me to do that.

22 Patrick Solon has been the one speaking almost the
23 entirety of the time. The other person who just spoke is Paul
24 Vickrey. Now this is Patrick Solon speaking.

25 COURT REPORTER: Thank you.

1 MR. SOLON: And I apologize.

2 Yeah. So to clarify, the relief sought is money
3 damages and not equitable. So the argument that was briefed
4 about official capacities, you know, in the 12(b)(6) motion was
5 about seeking declaratory and injunctive relief under the
6 Ex parte Young doctrine, it's in the exception to the Eleventh
7 Amendment and things like that. None of that analysis I think
8 applies at all to the state law counts.

9 THE COURT: All right. All right. And having heard
10 that then -- all right.

11 Then, Ms. Babbitt, what's your -- what's your
12 response? How do you want to go forward?

13 MS. BABBITT: Thank you, Your Honor. Elizabeth
14 Babbitt on behalf of the defendants.

15 I would disagree with the plaintiff's analysis as to
16 the pleadings and our ability to file a Rule 12(b)(6) motion.
17 The case law provides that we can pursue it particularly
18 because, one, they are misstating our appellate pleadings. We
19 did assert this issue of official capacity.

20 And the notion of Eleventh Amendment immunity on the
21 First Amendment retaliation claim, that was an issue that was
22 raised in the briefs but not addressed by the Seventh Circuit.
23 And that will be an argument that we would think remains ripe
24 for us to argue on a Rule 12(b)(6) motion.

25 Likewise, the case law would support a Rule 12(b)(6)

1 motion on the state law claims of defamation and false light.
2 You, Your Honor, relinquished supplemental jurisdiction over
3 those claims. They weren't taken up on appeal other than, you
4 know, I believe both parties probably preserved their rights on
5 the pleadings, plaintiffs to preserve pursuing those claims,
6 defendants to preserve a means to dismiss those claims. But
7 that hasn't been resolved so there hasn't been the satisfaction
8 of Rule 8 by the plaintiff on those claims, and the Court
9 hasn't adjudicated it, neither Your Honor nor the

10 Seventh Circuit, on the official capacity claims for the First
11 Amendment retaliation or the defamation and false light claims.

12 So I understand Mr. Solon, he is suggesting we file a
13 Rule 12(c) motion, but we don't believe the defendants are in a
14 position to answer yet because we believe that the claims don't
15 satisfy Rule 8 and that we have a valid 12(b)(6) motion to
16 bring. We never waived it, and the Court's not resolved those
17 arguments yet. So our position would be to file a
18 Rule 12(b)(6) motion and set a briefing schedule on that.

19 And then as to this issue that Your Honor raised which
20 we mentioned in footnote 2 of our motion at Docket 74, on the
21 state law claims, I think I heard Mr. Solon and Mr. Vickrey
22 confirm that there is not a claim effectively against the
23 university for defamation and false light even though they
24 mentioned that they're agents of the entity as opposed to
25 employees, but at agency status that they're asserting wouldn't

1 bring it into a claim against the university for defamation or
2 false light and the relief they seek would be limited to the
3 individual capacity claim side. That's how I understood it,
4 that that would be defendants' position on -- on those issues,
5 Your Honor.

6 THE COURT: Okay.

7 MR. SOLON: And the university, Your Honor -- Patrick
8 Solon here for plaintiff.

9 The university is not a party. So, you know, they're
10 not a state court/state law defendant in the defamation count.
11 So...

12 THE COURT: All right. No, that's fine. I'm sorry.
13 I'm just looking at the opinion quickly.

14 All right. All right. So I just wanted to look at
15 their -- how they address the retaliation in the opinion.

16 Okay. So going back and looking at their opinion,
17 they did not address validity certainly with regard to the
18 state law claims. I would say that they did not address that
19 other than to say because I declined to assert supplemental
20 jurisdiction over those claims that the validity or invalidity
21 of those claims remain an open question. So they vacated the
22 dismissal for further consideration which I'm taking to mean I
23 should address those claims because they sent back the
24 retaliation claim. And so that to me would allow the defendant
25 to raise any claims that they previously raised so that I could

1 address those in terms of a dismissal.

2 And with the Eleventh Amendment argument on the
3 retaliation claim, they did not address that in their opinion,
4 that argument in their opinion. And I know that I in my -- I'm
5 just pulling it up -- is that I didn't -- if you look at
6 footnote 6 on page 16 of the opinion, that I didn't consider
7 those arguments because I dismissed it on the merits.

8 So I think what makes sense here so that we know what
9 the landscape is going forward is to kind of consolidate those
10 arguments that I did not consider and that the Seventh Circuit
11 did not consider but that had been raised and then issue an
12 opinion on those, see where we are and then go from there.

13 So when would defendants want to get their motion on
14 file?

15 MS. BABBITT: May I have 28 days, Your Honor?

16 THE COURT: So that would be August 5th.

17 Then would plaintiff want to file a response?

18 MR. SOLON: Your Honor, Patrick Solon.

19 28 days also would be fine.

20 THE COURT: Okay. Why don't I give you 30 or so. So
21 that puts you, given -- because otherwise it gets you until
22 right after Labor Day. So why don't I give you until Friday,
23 September 5th.

24 And then when do defendants want to file their reply?

25 MS. BABBITT: May we file our reply on September 26,

1 Your Honor?

2 THE COURT: Sure. All right.

3 And then I will have you back Wednesday the 17th of
4 December at 9:30 for a ruling on the motion to dismiss. And my
5 understanding is that this will be -- this motion is limited to
6 arguments that the defendants raised previously in their motion
7 to dismiss but the Seventh Circuit did not address and that I
8 did not address in the opinion. So it would be the sovereign
9 immunity argument with respect to the First Amendment
10 retaliation claim and then a dismissal of the state law claims.

11 MS. BABBITT: Yes, Your Honor.

12 THE COURT: Okay. All right. So we'll see everybody
13 in December then.

14 MS. BABBITT: One other --

15 MR. SOLON: Your Honor, Patrick --

16 (Unreportable crosstalk.)

17 MS. BABBITT: We -- the defendants --

18 MR. SOLON: Defendants go first.

19 Go ahead.

20 MS. BABBITT: Sorry. Thank you. Elizabeth Babbitt on
21 behalf of defendants.

22 Your Honor, one issue that I think is perhaps on the
23 table, defendants would move to stay discovery pending
24 resolution of that motion to dismiss in order to avoid
25 piecemeal discovery which Your Honor previously granted a stay

1 for the same reasons because depending on where we go with
2 these state law claims, the scope of discovery can be pretty
3 different. There may be deponents who would need to be deposed
4 more than once depending on what remains in play after the
5 Court resolves the Rule 12 motion. We're happy to file a
6 written motion to stay discovery, but we wanted to raise it for
7 Your Honor if that was something you could address now.

8 THE COURT: Yeah. So my --

9 MR. SOLON: Your Honor, Patrick Solon.

10 THE COURT: Go ahead.

11 MR. SOLON: Yeah. Your Honor, I -- we would ask -- we
12 don't agree that -- that these limited partial arguments that
13 they're now making, you know, one about injunctive relief, the
14 Eleventh Amendment argument, and, you know, the defamation
15 which are, you know, statements made as part of the same course
16 of facts as the retaliation case, that they meaningfully affect
17 the scope of discovery and certainly not document discovery.
18 So we would ask at least that we be able to do document --
19 interrogatories can wait. But we would like to do document
20 requests at least, the scope of which isn't going to be
21 affected at all by, you know, even if their motion were fully
22 granted.

23 THE COURT: Ms. Babbitt, what's your --

24 (Unreportable crosstalk.)

25 MR. SOLON: The case is three years old.

1 MS. BABBITT: Yes. Your Honor, I would disagree with
2 that. I do think depending on, you know, the claims set out in
3 the defamation -- rather, the allegations set out in the
4 defamation count and the false light count, I mean, it would
5 involve additional parties, you know, additional elements, not
6 just, you know, whether or not there was First Amendment
7 retaliation but getting into, you know, proving the veracity of
8 statements. You know, he -- he alleges that he was defamed by
9 using racial slurs and that he was defamed because he was
10 accused of being guilty of race-based harassment of students.
11 And I think getting into proving, you know, the truth or the
12 falsity of those statements relative to the defamation and
13 false light claims, that would be a significant departure in
14 what would be I think rather limited on this First Amendment
15 retaliation and -- and the purpose and then the -- the --
16 the -- reason for which he would maintain he was retaliated
17 against. So I do think it -- it would put us on a different
18 path, and it would also require duplicative discovery and a lot
19 of elements.

20 THE COURT: Well, except it would --

21 MR. VICKREY: Your Honor, Paul Vickrey.

22 THE COURT: What I'm hearing -- what I'm hearing the
23 plaintiff say is that they're willing to -- what they're asking
24 for simply is document requests to at least get that piece
25 started and that they hold off on interrogatories and

1 depositions until you get a ruling from me on the scope of the
2 case.

3 MS. BABBITT: Your Honor --

4 MR. VICKREY: Paul Vickrey --

5 (Unreportable crosstalk.)

6 MR. VICKREY: Your Honor, may I be heard very briefly?
7 Paul Vickrey.

8 Yes. We're -- this is -- this is -- the universe of
9 documents, you know, are relevant to all of the claims. We're
10 talking about the investigative file. We're talking about the
11 communications, the e-mails, all of that. It's -- we're not
12 getting into depositions. We're not getting into -- you know,
13 other than the UIC universe of documents about this
14 investigation, about the communications concerning the
15 investigation and findings, those e-mails, it's a -- it's a
16 limited universe of documents. And, again, this is a
17 three-year-old case, and so we believe that it's time to turn
18 those documents over.

19 THE COURT: All right. So I think, Ms. Babbitt, that,
20 you know, that is -- it's a reasonable compromise to at least
21 start the document production, and we'll hold off on
22 interrogatories and any depositions until we have a better idea
23 of what the claims are and the scope of the claims going
24 forward, but that in any event, you know, the investigative
25 file would be relevant no matter what.

1 So I'll allow limited discovery for document
2 requests --

3 MS. BABBITT: Elizabeth Babbitt, Your Honor.

4 THE COURT: -- and --

5 MS. BABBITT: Oh, I'm sorry.

6 THE COURT: So it will be, Ms. Johnson, limited
7 discovery allowed for document requests and production, during
8 the pendency of the motion to dismiss briefing and ruling.

9 All right. Go ahead, Ms. Babbitt.

10 MS. BABBITT: Sorry, Your Honor.

11 Just to clarify that limited discovery would be
12 related just to the -- and I understand your point relative to
13 the investigation materials or those sorts of files. But just
14 to be clear, the order would provide that the discovery is
15 limited to the individual capacity First Amendment retaliation
16 claim?

17 MR. VICKREY: Your Honor, Paul Vickrey.

18 Just to be clear, we are -- we are going to -- in the
19 initial document requests, we will be seeking the entirety of
20 the investigative file, but these defendants' communications or
21 notes relating to either the investigation or to Professor
22 Kilborn. So -- so it's -- it's not only just the investigative
23 file but these defendants' communications concerning the
24 investigation and/or Kilborn. Very limited universe of
25 documents.

1 THE COURT: And that's fine. And I think we have an
2 understanding as to the scope of the retaliation claim as it
3 exists now and what defendants are going to get back that,
4 yeah, you can ask for e-mail communications. You can ask for
5 notes. You can ask for the investigative file. And we can get
6 that started, and then we can kind of go from there.

7 If it -- Ms. Babbitt, if you feel like, you know, it's
8 getting excessive or beyond what we've discussed, you can come
9 back and let me know. But I think, you know, it's a reasonable
10 compromise to at least get those started and, you know, the
11 case isn't going to go away completely no matter how I rule.

12 MS. BABBITT: Understood, Your Honor.

13 Is this reciprocal?

14 THE COURT: Yes.

15 MS. BABBITT: In other words, defendants are also
16 permitted to issue -- okay. Thank you.

17 THE COURT: Yes.

18 Okay. All right. We'll see everybody in December.

19 MS. BABBITT: Thank you, Your Honor.

20 UNIDENTIFIED SPEAKER: Thank you, Your Honor.

21 (Concluded at 10:15 a.m.)
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I certify that the foregoing is a correct transcript, to the extent possible, of the record of proceedings in the above-entitled matter given the limitations of conducting proceedings via telephone.

/s/ KELLY M. FITZGERALD July 16, 2025
KELLY M. FITZGERALD, RPR, RMR, CRR
Official Court Reporter